

STATEMENT OF EMERGENCY
787 KAR 1:360E

This emergency administrative regulation is promulgated pursuant to KRS 13A.190(1)(a)(1) and in response and pursuant to 2021 Senate Bill ("SB") 7 (R.S.), to meet the statutory requirements therein related to state waivers of unemployment insurance waivers.

The Kentucky General Assembly provided, via-2021 Senate Bill 7, the Labor Cabinet Secretary the authority to waive overpayments of unemployment insurance benefits upon the request of overpayment recipients if the recipient can demonstrate certain criteria. SB 7 was delivered to the Governor on March 11, 2021 and signed into law on March 12, 2021. As SB 7 carries an emergency clause, it became effective upon the Governor's signature. It is necessary to promulgate this emergency regulation in order to carry out the requirements provided in SB 7. An ordinary administrative regulation is not sufficient because the effective date of the ordinary regulation would not be coordinated with the effective date of SB 7.

This emergency regulation will be replaced by an ordinary administrative regulation, which is being filed contemporaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
LARRY L. ROBERTS, Secretary
BUDDY HOSKINSON, Executive Director

LABOR CABINET
Office of Unemployment Insurance
(New Emergency Administrative Regulation)

787 KAR 1:360E. Overpayment waivers.

EFFECTIVE: May 4, 2021

RELATES TO: 2021 SB 7, Section 2.

STATUTORY AUTHORITY: KRS 341.115(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. For unemployment insurance claims between January 27, 2020 and December 31, 2020, 2021 SB 7, Section 2 allows the Secretary to waive overpayments of unemployment insurance benefits if the secretary, upon an alleged overpayment recipient's waiver request, the secretary finds the overpayment was made (a) without fault on the part of the recipient, and (b) recovery of would be contrary to equity and good conscience. This emergency regulation establishes definitions and procedures for waiving overpayments pursuant to KRS Chapter 341 and 2021 SB 7, Section 2.

Section 1. Definitions. (1) "Benefits" means benefits as defined in KRS 341.020(4).

(2) "Financial hardship" means an individual or that individual's immediate family has experienced at least a fifty (50) percent reduction in gross earned income or loss of employment.

(3) "Office" means the Office of Unemployment Insurance within the Kentucky Labor Cabinet.

(4) "Office error" means:

(a) Errors in computing the benefit rate;

- (b) Incorrect weekly payment due to a failure to consider a deductible amount that was properly reported by a claimant;
 - (c) Payment beyond the expiration of the benefit year;
 - (d) Payment in excess of the maximum benefit amount;
 - (e) Payment under an incorrect program;
 - (f) Retroactive notice of nonmonetary determinations, except that a determination that the claimant has committed fraud shall not be considered office error;
 - (g) Monetary redeterminations;
 - (h) Payment during a period of disqualification;
 - (i) Payment to a wrong claimant; or
 - (j) Erroneous payments resulting from human error in the data entry process.
- (5) "Secretary" means the Secretary of the Kentucky Labor Cabinet.

Section 2. Waiver Request. An individual shall make a request for waiver of a determined overpayment within thirty (30) days of the Secretary's mailing of the notification that the individual has been overpaid unemployment insurance benefits.

Section 3. Waivers. Upon receipt of an overpayment recipient's request for an overpayment waiver, the secretary shall issue a waiver of the alleged overpayment if he or she determines the following:

- (1) The overpayment was made without fault on the part of the recipient; and
- (2) Recovery would be contrary to equity and good conscience.

Section 4. No Fault Determination. For purpose of Section 3(1) of this administrative regulation, the secretary shall make a determination that the alleged overpayment was made without fault on the part of the recipient when the overpayment of benefits resulted from the following:

- (1) "Office error" as defined in Section 1 and 787 KAR 1:190, Section 1; or
- (2) Auto-payment of benefits.

Section 5. Equity and Good Conscience Determination. For purposes of Section 3(2) of this administrative regulation, the secretary shall make a finding that a recovery of an alleged overpayment is contrary to equity and good conscience when an individual demonstrates any of the following:

(1) Recovery would cause financial hardship to the person from whom it is sought. An individual demonstrates financial hardship where he or she can show that, as a result of the recovery, he or she is unable to meet daily living expenses, including expenses for food, clothing, rent, utilities, insurance, job or job search-related transportation expenses, and medical expenses.

(2) The alleged overpayment recipient can show, regardless of his or her financial circumstances, that due to the notice that such payment would be made or because of the incorrect payment either he or she has relinquished a valuable right or changed positions for the worse. This can be shown where the recipient has made substantial necessary purchases related to daily living expenses, expended substantial necessary funds on daily living expenses, or failed to seek other benefits in reliance upon the receipt of benefits.

- (3) Recovery could be unconscionable, unjust, or unfair under the circumstances.

BUDDY HOSKINSON, Executive Director

LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: May 3, 2021

FILED WITH LRC: May 4, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/87517187721?pwd=MVFRcSt3dEJ2dFRVaEdyS0ZCa2Z3QT09>, password 882792 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 278497. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email buddy.hoskinson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedures for waiving unemployment insurance claims overpayments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out 2021 SB 7, Section 2.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary promulgate administrative regulation necessary or suitable for the proper administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions and procedures for waiving unemployment insurance claims overpayments pursuant to KRS Chapter 341 and 2021 SB 7, Section 2.

(2) If this is an amendment to an existing regulation, provide a brief summary of:

(a) How this amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation affects unemployment insurance benefit recipients in the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the unemployment insurance benefit recipients to comply with this emergency administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This emergency regulation allows the Labor Cabinet Secretary to waive overpayments of unemployment insurance benefits.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: \$194,560

(b) On a continuing basis: \$93,600

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this emergency regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this emergency administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All unemployment insurance benefit overpayment recipients are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This emergency administrative regulation impacts the Office of Unemployment Insurance within the Kentucky Labor Cabinet.

(2) Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. 2021 Senate Bill 7 (R.S.), Section 2.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.

(b) How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for subsequent years? \$93,600.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other explanations: This amendment does not impose any additional expenditures to employers.